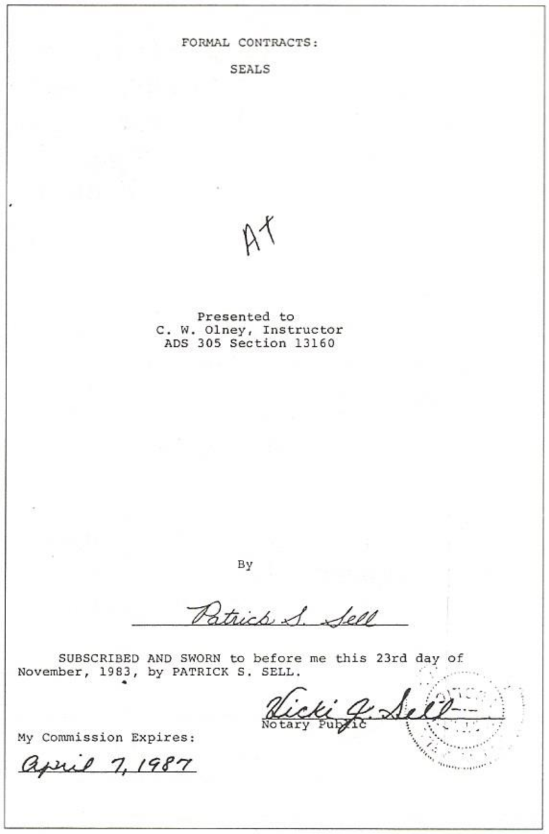

FORMAL CONTRACTS:

SEALS

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Presented to
C. W. Olney, Instructor
ADS 305 Section 13160

By

Patrick S. Sell

SUBSCRIBED AND SWORN to before me this 23rd day of November, 1983, by PATRICK S. SELL.

Vicki J. Sell
Notary Public

My Commission Expires:

April 7, 1987

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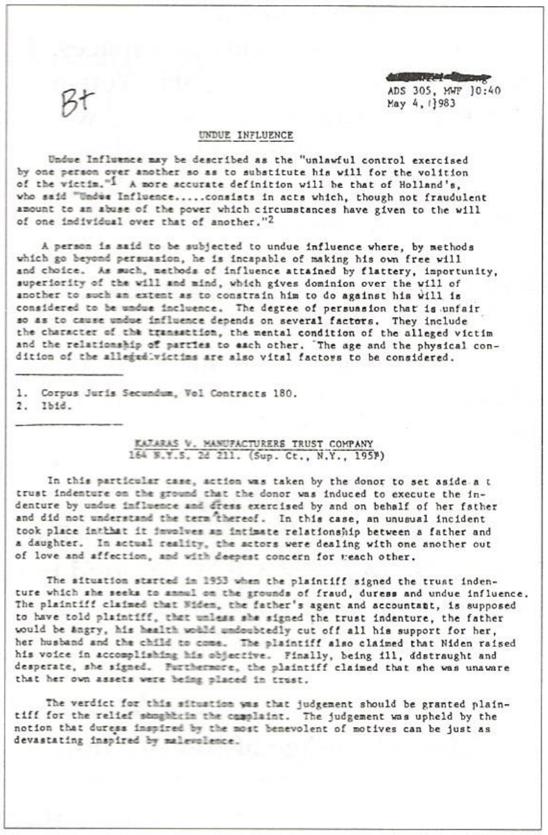

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UNDUE INFLUENCE

Undue Influence may be described as the "unlawful control exercised by one person over another so as to substitute his will for the volition of the victim."[1] A more accurate definition will be that of Holland's, who said "Undue Influence.....consists in acts which, though not fraudulent amount to an abuse of the power which circumstances have given to the will of one individual over that of another."[2]

A person is said to be subjected to undue influence where, by methods which go beyond persuasion, he is incapable of making his own free will and choice. As much, methods of influence attained by flattery, importunity, superiority of the will and mind, which gives dominion over the will of another to such an extent as to constrain him to do against his will is considered to be undue incluence. The degree of persuasion that is unfair so as to cause undue influence depends on several factors. They include the character of the transaction, the mental condition of the alleged victim and the relationship of parties to each other. The age and the physical condition of the alleged victims are also vital factors to be considered.

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1. Corpus Juris Secundum, Vol Contracts 180.
2. Ibid.

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KAZARAS V. MANUFACTURERS TRUST COMPANY
164 N.Y.S. 2d 211. (Sup. Ct., N.Y., 1958)

In this particular case, action was taken by the donor to set aside a trust indenture on the ground that the donor was induced to execute the indenture by undue influence and dress exercised by and on behalf of her father and did not understand the term thereof. In this case, an unusual incident took place inthat it involves an intimate relationship between a father and a daughter. In actual reality, the actors were dealing with one another out of love and affection, and with deepest concern for each other.

The situation started in 1953 when the plaintiff signed the trust indenture which she seeks to annul on the grounds of fraud, duress and undue influence. The plaintiff claimed that Niden, the father's agent and accountant, is supposed to have told plaintiff, that unless she signed the trust indenture, the father would be angry, his health would undoubtedly cut off all his support for her, her husband and the child to come. The plaintiff also claimed that Niden raised his voice in accomplishing his objective. Finally, being ill, ddstraught and desperate, she signed. Furthermore, the plaintiff claimed that she was unaware that her own assets were being placed in trust.

The verdict for this situation was that judgement should be granted plaintiff for the relief soughtcin the complaint. The judgement was upheld by the notion that duress inspired by the most benevolent of motives can be just as devastating inspired by malevolence.

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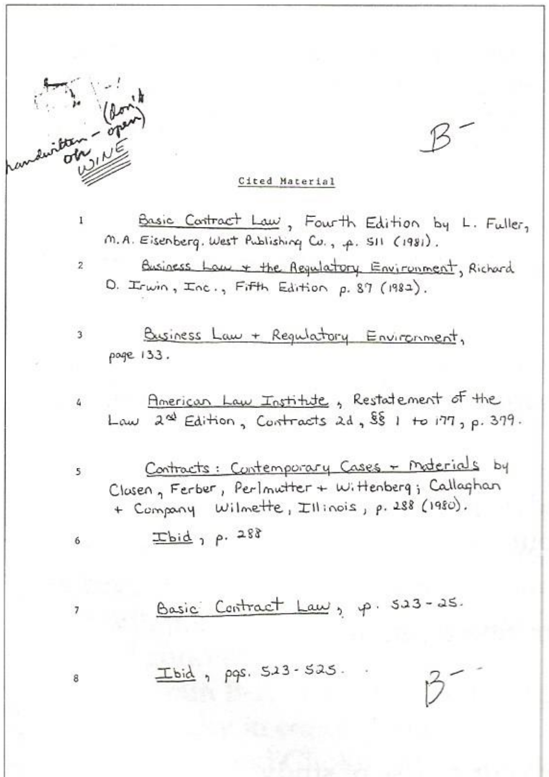

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Cited Material

1 Basic Contract Law, Fourth Edition by L. Fuller, M.A. Eisenberg. West Publishing Co., p. 511 (1981).

2 Business Law + the Regulatory Environment, Richard D. Irwin, Inc., Fifth Edition p. 87 (1982).

3 Business Law + Regulatory Environment, page 133.

4 American Law Institute, Restatement of the Law 2nd Edition, Contracts 2d, §§ 1 to 177, p. 379.

5 Contracts: Contemporary Cases + Materials by Closen, Ferber, Perlmutter + Wittenberg; Callaghan + Company Wilmette, Illinois, p. 288 (1980).

6 Ibid, p. 288

7 Basic Contract Law, p. 523-25.

8 Ibid, pgs. 523-525.

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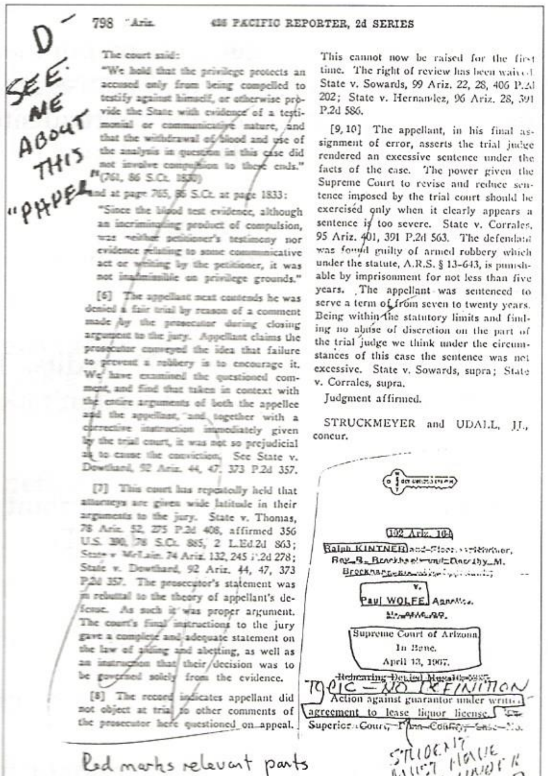

798 Ariz. 426 PACIFIC REPORTER, 2d SERIES

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SEE ME ABOUT THIS "PAPER"

The court said:

"We hold that the privilege protects an accused only from being compelled to testify against himself, or otherwise provide the State with evidence of a testimonial or communicative nature, and that the withdrawal of blood and use of the analysis in question in this case did not involve compulsion to these ends." (761, 86 S.Ct. 1830)

and at page 765, 86 S.Ct. at page 1833:

"Since the blood test evidence, although an incriminating product of compulsion, was neither petitioner's testimony nor evidence relating to some communicative act or writing by the petitioner, it was not inadmissible on privilege grounds."

[6] The appellant next contends he was denied a fair trial by reason of a comment made by the prosecutor during closing argument to the jury. Appellant claims the prosecutor conveyed the idea that failure to prevent a robbery is to encourage it. We have examined the questioned comment, and find that taken in context with the entire arguments of both the appellee and the appellant, and together with a corrective instruction immediately given by the trial court, it was not so prejudicial as to cause the conviction. See State v. Dowthard, 92 Ariz. 44, 47, 373 P.2d 357.

[7] This court has repeatedly held that attorneys are given wide latitude in their arguments to the jury. State v. Thomas, 78 Ariz. 52, 275 P.2d 408, affirmed 356 U.S. 390, 78 S.Ct. 885, 2 L.Ed.2d 863; State v. McLain, 74 Ariz. 132, 245 P.2d 278; State v. Dowthard, 92 Ariz. 44, 47, 373 P.2d 357. The prosecutor's statement was in rebuttal to the theory of appellant's defense. As such it was proper argument. The court's final instructions to the jury gave a complete and adequate statement on the law of aiding and abetting, as well as an instruction that their decision was to be governed solely from the evidence.

[8] The record indicates appellant did not object at trial to other comments of the prosecutor here questioned on appeal. This cannot now be raised for the first time. The right of review has been waived. State v. Sowards, 99 Ariz. 22, 28, 406 P.2d 202; State v. Hernandez, 96 Ariz. 28, 391 P.2d 586.

[9, 10] The appellant, in his final assignment of error, asserts the trial judge rendered an excessive sentence under the facts of the case. The power given the Supreme Court to revise and reduce sentence imposed by the trial court should be exercised only when it clearly appears a sentence is too severe. State v. Corrales, 95 Ariz. 401, 391 P.2d 563. The defendant was found guilty of armed robbery which under the statute, A.R.S. § 13-643, is punishable by imprisonment for not less than five years. The appellant was sentenced to serve a term of from seven to twenty years. Being within the statutory limits and finding no abuse of discretion on the part of the trial judge we think under the circumstances of this case the sentence was not excessive. State v. Sowards, supra; State v. Corrales, supra.

Judgment affirmed.

STRUCKMEYER and UDALL, JJ., concur.

102 Ariz. 164

Ralph KINTNER ~~and [illegible], Roy B. Brockhaus and Dorothy M. Brockhaus, [illegible]~~

v.

Paul WOLFE, Appellee.

~~No. [illegible]~~

Supreme Court of Arizona,
In Banc.
April 13, 1967.

~~Rehearing Denied May [illegible]~~

TOPIC — NO DEFINITION

Action against guarantor under written agreement to lease liquor license. ~~[illegible]~~ Superior Court, ~~[illegible] County, Case No.~~

STUDENT MUST HAVE BEEN UNDER THE INFLUENCE

Red marks relevant parts